

AMENDED IN ASSEMBLY JUNE 29, 2004
AMENDED IN ASSEMBLY JUNE 10, 2004
AMENDED IN ASSEMBLY AUGUST 19, 2003
AMENDED IN SENATE APRIL 30, 2003

SENATE BILL

No. 199

Introduced by Senator Murray

February 13, 2003

~~An act to add Article 9 (commencing with Section 17600) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to telephone solicitations. An act to amend Section 2891.1 of the Public Utilities Code, relating to telecommunications.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 199, as amended, Murray. ~~Wireless telephones: directories—Telecommunications: selling or licensing lists of subscribers.~~

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations.

Existing law authorizes the commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation. Existing law prohibits a telephone corporation selling or licensing lists of residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection, with specified exceptions.

This bill would prohibit a provider of mobile telephony services, as defined, providing the name and dialing number of a subscriber for inclusion in a directory, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. The bill would establish certain requirements for the provider's form for obtaining the subscriber's express consent. A subscriber would be permitted to revoke his or her consent to inclusion in a directory and would require that the mobile telephony services provider comply with the subscriber's request to opt out within 30 days. The bill would prohibit a provider of mobile telephony services or an affiliate or agent, from publishing any directory database, or any portion or segment of a directory database. The bill would prohibit a provider of mobile telephony services or an affiliate or agent, from selling any directory database, or any portion or segment of a directory database, to a third party. The bill would create an exception from the above provisions for a telephone corporation transferring a customer's assigned telephone number to a new provider.

This bill would make the operation of its provisions contingent upon the enactment of AB 1733.

~~Existing law provides for the creation of a "do not call" registry by the Federal Trade Commission and prohibits telephone solicitors from calling a telephone number on that registry, subject to various exceptions.~~

~~This bill would provide that it is unlawful for a wireless telephone service provider, an agent of a wireless telephone service provider, or an association of telephone service providers to disclose the wireless telephone number of a subscriber without express prior consent. The bill would provide various remedies for violations of this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 9 (commencing with Section 17600) is~~

2 *SECTION 1. Section 2891.1 of the Public Utilities Code is*
3 *amended to read:*

4 2891.1. (a) Notwithstanding Section 2891, a telephone
5 corporation selling or licensing lists of residential subscribers shall
6 not include the telephone number of any subscriber assigned an
7 unlisted or unpublished access number.

8 ~~(b)~~ A subscriber may waive all or part of the protection
9 provided by this ~~section~~ *subdivision* through written notice to the
10 telephone corporation.

11 ~~(c)~~

12 (b) Notwithstanding Section 2891, a provider of mobile
13 telephony services providing the name and dialing number of a
14 subscriber for inclusion in any directory, shall not include the
15 dialing number of any subscriber without first obtaining the
16 express consent of that subscriber. The provider's form for
17 obtaining the subscriber's express consent shall meet all of the
18 following requirements:

19 (1) It shall be a separate document that is not attached to any
20 other document.

21 (2) It shall be signed and dated by the subscriber.

22 (3) It shall be unambiguous, legible, and in a minimum
23 10-point type, and conspicuously disclose that, by signing, the
24 subscriber is consenting to have the subscriber's dialing number
25 sold or licensed as part of a list of subscribers and the subscriber's
26 dialing number may be included in a publicly available directory.

27 (4) If under the subscriber's calling plan the subscriber may be
28 billed for receiving unsolicited calls or text messaging from a
29 telemarketer, the provider's form shall include a disclosure, which
30 shall be unambiguous, legible, and in 10-point type at a minimum,
31 that by consenting to have the subscriber's dialing number sold or
32 licensed as part of a list of subscribers or be included in a publicly
33 available directory, the subscriber may incur additional charges
34 for receiving unsolicited calls or text messages.

35 (c) A subscriber who provides express prior consent pursuant
36 to subdivision (b) may revoke that consent at any time. A provider
37 of mobile telephony services shall comply with the subscriber's
38 request to opt out within 30 days.

1 (d) A subscriber shall not be charged for making the choice to
2 not be listed in a directory.

3 (e) A provider of mobile telephony services, or any direct or
4 indirect affiliate or agent of a provider, may not publish, in printed,
5 electronic, or other form, the contents of any directory database,
6 or any portion or segment thereof.

7 (f) A provider of mobile telephony services, or any direct or
8 indirect affiliate or agent of a provider, may not sell to a third-party
9 the contents of any directory database, or any portion or segment
10 thereof.

11 (g) This section does not apply to the provision of telephone
12 numbers to the following parties for the purposes indicated:

13 (1) To a collection agency, to the extent disclosures made by the
14 agency are supervised by the commission, exclusively for the
15 collection of unpaid debts.

16 (2) (A) To any law enforcement agency, fire protection
17 agency, public health agency, public environmental health agency,
18 city or county emergency services planning agency, or private
19 for-profit agency operating under contract with, and at the
20 direction of, one or more of these agencies, for the exclusive
21 purpose of responding to a 911 call or communicating an imminent
22 threat to life or property.

23 (B) Any information or records provided to a private for-profit
24 agency pursuant to this subdivision shall be held in confidence by
25 that agency and by any individual employed by or associated with
26 that agency. This information or these records shall not be open to
27 examination for any purpose not directly connected with the
28 administration of the services specified in subdivision (e) of
29 Section 2872 or this paragraph.

30 (3) To a lawful process issued under state or federal law.

31 (4) To a telephone corporation providing service between
32 service areas for the provision to the subscriber of telephone
33 service between service areas, or to third parties for the limited
34 purpose of providing billing services.

35 (5) To a telephone corporation, to effectuate a customer's
36 request to transfer the customer's assigned telephone number from
37 the customer's existing provider of telecommunications services to
38 a new provider of telecommunications services.

39 (6) To the commission pursuant to its jurisdiction and control
40 over telephone and telegraph corporations.

~~(d)~~

(h) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

~~(e)~~

(i) For purposes of this section, “unpublished or unlisted access number” means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

~~(f)~~

(j) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

(k) *The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application.*

(l) *For purposes of this section, “mobile telephony services” means commercially available interconnected mobile phone services that provide access to the Public Switched Telephone Network (PSTN) via mobile communication devices employing radio wave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). “Mobile telephony services” do not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.*

SEC. 2. *This act shall become operative only if Assembly Bill 1733 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.*

~~added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:~~

1 ~~Article 9. Wireless Telephone Solicitations and Directories~~

2
3 ~~17600. It is unlawful for a wireless telephone service~~
4 ~~provider, an agent of a wireless telephone service provider, or an~~
5 ~~association of telephone service providers to disclose the wireless~~
6 ~~telephone number of a subscriber without the express prior consent~~
7 ~~of the subscriber.~~

8 ~~17601. (a) The Attorney General, a district attorney, or a city~~
9 ~~attorney may bring a civil action in any court of competent~~
10 ~~jurisdiction against a wireless telephone provider to enforce this~~
11 ~~article and to obtain any one or both of the following remedies:~~

12 ~~(1) An order to enjoin the violation.~~

13 ~~(2) A civil penalty of up to five hundred dollars (\$500) for the~~
14 ~~first violation and up to one thousand dollars (\$1,000) for a second~~
15 ~~and each subsequent violation.~~

16 ~~(b) Any person whose wireless telephone number has been~~
17 ~~disclosed in violation of Section 17600 may bring a civil action for~~
18 ~~an injunction and may seek damages of up to one thousand dollars~~
19 ~~(\$1,000) for each violation.~~

20 ~~17602. If any provision of this article or the application~~
21 ~~thereof to any person or circumstances is determined by a court to~~
22 ~~be invalid, that invalidity shall not affect other provisions or~~
23 ~~applications of this article that can be given effect without the~~
24 ~~invalid provision or application, and to this end the provisions of~~
25 ~~this article are severable.~~